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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,815	07/10/2003	Anthony John Verzino		2268
7590	03/15/2006		EXAMINER	
SIMON, GALASSO & FRANTZ PLC. P.O. Box 26503 Austin, TX 78755-0503			KEASEL, ERIC S	
			ART UNIT	PAPER NUMBER
			3754	
DATE MAILED: 03/15/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/616,815	VERZINO, ANTHONY JOHN	
	Examiner Eric Keasel	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 December 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,6-8,12-15,19 and 20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,6-8,12-15,19 and 20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 7/10/2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Amendment

1. The amendment to the claims filed on December 27, 2005 does not comply with the requirements of 37 CFR 1.121(c) because the no claim text shall be presented for any claim with the status of “canceled”, “previously submitted” is not a proper status identifier, the status identifiers for claims 7 and 14 have been omitted, and the claim listing does not commence on a separate page. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of “canceled” or “not entered” may be aggregated into one statement (e.g., Claims 1–5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of “currently amended,” and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of “currently amended,” or “withdrawn” if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as “withdrawn—currently amended.”

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, *i.e.*, without any markings in the presentation of text. The presentation of a clean version of any claim having the status of “original,” “withdrawn” or “previously presented” will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of “withdrawn” or “previously presented.” Any claim added by amendment must be indicated with the status of “new” and presented in clean version, *i.e.*, without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of “canceled” or “not entered.”

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as “canceled” will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a “new” claim with a new claim number.

However, to further prosecution, an examiner’s amendment to the record appears below.

The application has been amended as follows:

The status identifiers for claims 2, 6, 8, 12, 13, 15, 19, and 20 have been changed to (previously presented).

The status identifier of (currently amended) has been inserted for claims 7 and 14.

The text of canceled claims 3-5, 9-11, and 16-18 has been deleted.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the weighting element being a bracket with an offset weight and also being a threaded nut with the tube extending through the center of mass of the nut in the same embodiment must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 1, 7, and 14 are objected to because claim 1 ends in the middle of the sentence and does not end with a period, and in the second to last line of claims 1, 7, and 14, it appears that "tub" should be --tube--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 2, 6-8, 12-15, 19, and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Each of the independent claims have been amended to recite that the weighted element is both a bracket with an offset weight and also a threaded nut with the tube extending through the center of mass of the nut. However, the originally filed application discloses that these are two separate embodiments and there is no disclosure in the originally filed application that suggests that both embodiments will be used on a single dip tube. This is a new matter rejection.

6. Claims 2, 8, and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Each of the independent claims have been amended to recite that the weighted element is both a bracket with an offset weight and also a threaded nut with the tube extending through the center of mass of the nut. However, claims 2, 8, and 15 require the tube to extend through the center of mass of the weighting element. The addition of the offset center of mass with the bracket makes it impossible to build a device that has the tube extend through the center of mass of the weighting element.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1, 2, 6-8, 12-15, 19, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of the independent claims have been amended to recite that the weighted element is both a bracket with an offset weight and also a threaded nut with the tube extending through the center of mass of the nut. It is unclear if applicant has intended to cross features from distinct species or if the claims should have recited only one of these weighting elements. Also, claims 2, 8, and 15 require the tube to extend through the center of mass of the weighting element. The addition of the offset center of mass with the bracket makes it impossible to build a device that has the tube extend through the center of mass of the weighting element. It is unclear what the metes and bounds of these claims are because the device in the dependent claims is impossible to build.

9. In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 2, 6-8, 12-15, 19, and 20 (as understood and to the extent that they are possible to make and/or use) are rejected under 35 U.S.C. 103(a) as being unpatentable over McKay (US Patent Number 2,372,678) in view of Braymer (US Patent Number 750,521).

McKay discloses a fluid dispensing apparatus, comprising: a fluid container (21) having a neck portion and a closed end (193) generally opposite the neck portion; a body mounted on the neck portion of the fluid container (see Fig. 1); a fluid extraction tube (189) attached at a delivery end thereof to the body, wherein the fluid extraction tube is attached in a manner enabling fluid to be extracted from within the fluid container and dispensed via the body; and a weighting element (191) attached to the fluid extraction tube adjacent to a pick-up end of the fluid extraction tube, wherein the weighting element provides for displacement of the pick-up end of the fluid extraction tube to a gravity-induced position within the fluid container; wherein the fluid extraction tube extends approximately through a center of mass of the weighting element (see Fig. 1); wherein the weighting element includes a metallic threaded nut (i.e. it is internally threaded); wherein the fluid extraction tube extends approximately through a center of mass of the metallic threaded nut; wherein the fluid extraction tube is flexible; and a degree of flexibility of the fluid extraction tube is dependent upon a particular mass of the weighting element and a

maximum specified displacement of the pick-up end of the fluid extraction tube; and wherein the body is one of a body for a manual pump non-atomizing fluid dispenser, a body for a manual pump atomizing fluid sprayer, a body for an aerosol spray dispenser and a body for a hose-end sprayer. Therefore, McKay anticipates the claims if the two distinct weighting elements were meant to be recited in the alternative.

Alternatively, if the claims are treated as written with both weighting elements on a single dip tube, then McKay fails to disclose the bracket and offset weight. Braymer discloses a fluid dispensing apparatus, comprising: a fluid container (20) having a neck portion and a closed end generally opposite the neck portion; a body (22) mounted on the neck portion of the fluid container; a fluid extraction tube (25 and/or 26) attached at a delivery end thereof to the body, wherein the fluid extraction tube is attached in a manner enabling fluid to be extracted from within the fluid container and dispensed via the body; and a weighting element (14, 39, or 51, or alternatively the weight in combination with the lower tube) attached to the fluid extraction tube adjacent to a pick-up end of the fluid extraction tube, wherein the weighting element provides for displacement of the pick-up end of the fluid extraction tube to a gravity-induced position within the fluid container; wherein the weighting element includes a bracket attached to the fluid extraction tube and a weight attached to the bracket; and a center of mass of the weight is offset from a longitudinal axis of the fluid extraction tube (note, a bracket is shown around the lower dip tube in Figs. 2-5 and the weight is attached to the bracket and offset from the center of the dip tube. Under an alternate reading, the upper portion of the dip tube can be read as the flexible extraction tube and the combined lower dip tube and weight can be read as the offset weight attached by a bracket between the upper and lower tubes shown in Figs. 2-5); wherein the fluid

extraction tube is flexible; and a degree of flexibility of the fluid extraction tube is dependent upon a particular mass of the weighting element and a maximum specified displacement of the pick-up end of the fluid extraction tube; and wherein the body is one of a body for a manual pump non-atomizing fluid dispenser, a body for a manual pump atomizing fluid sprayer, a body for an aerosol spray dispenser and a body for a hose-end sprayer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have added the bracket and offset weight of Braymer to the device of McKay in order insure rotation of the tube when the reservoir is tilted as taught by Braymer.

Response to Arguments

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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